

TRANS-SUMMIT SDN. BHD.

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v.

CHUN NYOOK LIN (P)

HIGH COURT MALAYA, MELAKA
DATUK WIRA HAJI MOHD NOOR BIN HAJI AHMAD J.
[ORIGINATING SUMMONS NO. 24-8-1994]
14 SEPTEMBER 1994

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LAND LAW: Section 327 NLC - Removal of private caveats - Respondent given option to purchase land - Land purchased by applicant with agreement of respondent - Respondent lodging caveats on land - Applicant unable to register transfer - Respondent filing writ against applicant and registered proprietor seeking declarations and orders relating to a joint-venture agreement - Respondent given notice under s. 326 NLC to remove caveats - Caveats extended by Court order until disposal of suit - Whether respondent had a registrable interest within meaning of s. 323(1)(a) NLC - Burden of proof - Conflict of evidence - Whether respondent's claim to an interest in the land raises a serious question to be tried - Whether on a balance of convenience it would be better to maintain the status quo until the trial of the action.

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This was an application for an order to remove private caveats lodged by the respondent on two lots of land (the land).

The respondent was given the option to purchase the land but the land was subsequently purchased by the applicant with the respondent's agreement. The necessary documents of transfer were executed but could not be registered as the respondent had lodged two caveats on the land. On 22 September 1993, the respondent was given a notice under s. 326 of the National Land Code (NLC) to remove the caveats. However, the respondent obtained a Court order extending the caveats for two months. On 14 December 1993, the respondent filed a writ against the applicant and the registered proprietor seeking declarations and orders relating to a joint-venture agreement and on 3 January 1994 the caveats were further extended until the disposal of the suit.

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The applicant contended that the respondent had no caveatable interest because the option to purchase the land had been assigned by the respondent to the applicant for a consideration of RM15,000 which had been paid in full. On the other hand the respondent asserted that it had a caveatable interest because its consent for the applicant to purchase was given on the understanding that a joint-venture agreement to develop the land would be subsequently executed between them which the applicant refused to execute after the said purchase.

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The main issue before the Court was whether the respondent had a registrable interest within the meaning of s. 323(1)(a) of the NLC.

Held:

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[1] In recent cases, the Courts have given subsection (1)(a) of s. 323 of the NLC a wider and liberal interpretation to include purchasers of land, company owners, chargees, tenants and even an option holder. In *Raju, J. a/l M. Kerpayu v. Kwong Yik Bank Bhd. & Anor.*, the Supreme Court held that a mere right (as opposed to proved right) to a registrable interest was sufficient ground to enter a private caveat under the section and further, that a person who is entitled to commence an action for a declaratory decree affecting his rights under the NLC was entitled to enter a private caveat. Based on the

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- a** fact that the respondent was the original option holder which right was assigned to the applicant, that the respondent was entitled to commence an action for a declaratory decree which action was already filed and the principle enunciated in *Raju's* case above, the Court was satisfied that the respondent had a mere right (as opposed to a proved right) to a registrable interest in the land within the meaning of s. 323(1)(a) of the NLC.
- b** [2] It is settled law that in an application by a caveatee to remove a caveat under s. 327 of the NLC, the onus is on the caveator to satisfy the Court that he has a caveatable interest in the land within the meaning of s. 323(1). Thus in the present case the burden of proof was on the respondent.
- [3] Both parties had raised a conflict of evidence mainly on the issue of consideration. For this reason, the Court was satisfied that the respondent's claim to an interest in the land did raise a serious question to be tried. As for the balance of convenience, the purpose for removing the caveats was to enable the applicant to develop the land into a housing estate and the sale of the housing lots was imminent. As the respondent had filed a writ against the applicant and registered proprietor of the land, the Court was satisfied that the respondent had shown that on a balance of convenience it would be better to maintain the *status quo* until the trial of the action by preventing the applicant from disposing of the land to some third party.
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[Application dismissed with costs].

Cases referred to:

- Macon Engineers Sdn. Bhd. v. Goh Hooi Yen* [1976] 2 MLJ 53 (**refd**)
- Macon Works & Trading Sdn. Bhd. v. Phang Hon Chin* [1976] 2 MLJ 177 (**refd**)
- e** *Karuppiah Chettiar v. Subramaniam* [1971] 2 MLJ 209 (**refd**)
- Sing Lian Enterprise Sdn. Bhd. v. Soh Kim Tee* [1974] 2 MLJ 24 (**refd**)
- Rap Nathan v. Haji Abdul Rahman Bin Haji Yusoff & Ors.* [1980] 1 MLJ 248 (**refd**)
- Raju, J a/l M Kerpayya v. Kwong Yik Bank Bhd. & Anor.* [1994] 2 CLJ 695/[1994] 2 AMR 24 (**fol**)
- Eng Mee Yong & Ors. v. Letchumanan Velayutham* [1979] 2 MLJ 212 (**refd**)
- f** *Hew Sook Ying v. Hiw Tin Hee* [1992] 3 CLJ 1325/[1992] 2 MLJ 189 (**refd**)

Legislation referred to:

National Land Code, ss. 323(1)(a), (b), 326, 327

For the applicant - Wong Kim Fatt; M/s. Gulam & Wong

For the respondent - F.H. D'Cruz; M/s. S.K. Khoo & Tan Tian Tiok

JUDGMENT

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Haji Mohd Noor Bin Haji Ahmad J:

- In this case, the applicant seeks, *inter alia* for an order to remove two private caveats entered by the respondent on lots 1913 and 1914 held under Geran Mukim 25 and 23 and on lot 1915 held under Geran 3548, Mukim Durian Tunggal, Alor Gajah, Melaka (hereinafter referred to as "the said land").
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- Briefly, the facts reveal that on 4 September 1992 Airport Auto Centre Sdn. Bhd., of which the respondent is a director (hereinafter referred to as "the respondent's company") was given the option to purchase the said land from Mayban Finance Berhad (hereinafter referred to as "Mayban") at 1.1 million ringgit. Kumpulan Realty Melaka Sdn. Bhd. (under liquidation) is the registered proprietor of the said land. However, with the agreement of the respondent's company, the said land was purchased by the
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applicant at the same price, of which full payment had been made, the necessary documents of transfer executed and exclusive possession had been given to the applicant since 29 June 1993. The respondent lodged the caveats on behalf of the respondent's company on 7 July 1993. On 22 September 1993, the Registrar of Titles gave the respondent a notice under s. 326 of the National Land Code (hereinafter referred to as "the Code") to remove the caveats. On the application of the respondent to this Court the caveats were extended for 2 months on 12 November 1993 (*vide* a originating summons No. 24-311-93). On 14 December 1993, the respondent's company filed a writ against the applicant and the registered proprietor of the said land seeking certain declarations and orders relating to a joint-venture agreement (*vide* Civil Suit No. 22-111-93). On 3 January 1994, on the application of the respondent, the caveats were further extended until the disposal of the suit. With the existence of the caveats the applicant is not able to proceed with housing development on the said land because the said purchase could not be registered.

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In the affidavit evidence, the applicant contended that the respondent's company has no caveatable interest because the option to purchase the said land had been assigned by the respondent's company to the applicant for a consideration of RM15,000, of which full payments had been made to the respondent's company, by three equal instalments. Whereas the respondent's company asserted that it has a caveatable interest because its consent for the applicant to purchase the said land was given on the mutual understanding that a joint-venture agreement to develop the said land into housing scheme would be subsequently executed between them, the terms of which are as spelt out in the draft agreement drafted by their common solicitors (*vide* exhibit CBW-5 in the affidavit of Chee Beng Wah declared on 25 October 1993 in originating summons No. 24-311-93), which the applicant refused to execute after the said purchase. In a nutshell, under the draft agreement, it is alleged that the applicant had agreed to purchase the said land from the respondent's company at the purchase price of 2.4 million ringgit and as the applicant had already paid Mayban the sum of 1.1 million ringgit, the balance of the purchase price of 1.3 million ringgit due to the respondent's company from the applicant is to be reserved as capital towards the proposed joint venture, and the applicant is required to contribute to the development costs. The profit from the joint-venture is to be divided in the proportion of 2/3 to the applicant and 1/3 to the respondent's company.

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It is clear from the affidavits filed that the facts relied upon by both parties raise a conflict of evidence, mainly on the issue of consideration for the respondent's company in having agreed to the purchase of the said land by the applicant from Mayban, that is to say, whether the consideration is RM15,000, as alleged by the applicant or whether the consideration is as spelt out in the joint-venture agreement, as alleged by the respondent's company. At this juncture, I am unable to decide the issue from the affidavit evidence because certain assertions and denials by both parties lack precision for example, on the assertion by the applicant about the payment of the consideration in the sum of RM15,000 the details as to the form of payment and acknowledgment by the respondent's company have not been spelt out therein. Under such circumstances it is not the function of this Court at this stage to decide on the disputed facts and difficult question of law arising therefrom. It is best that this matter be left at the hearing of the suit proper. However, at this juncture, I am satisfied from the documentary evidence that the respondent entered the two private caveats as an officer of the respondent's company to protect its interest. (see exhibits YSL-5 in the affidavit of Yap Sing Lee deposed on 8

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- a** January 1994 enclosure (4)). Hence, I need not touch on the provision of s. 323(1)(b) of the Code.

Thus, the issue before me now is whether the respondent's company has a right to registrable interest within the meaning of s. 323(1)(a) of the Code. The section reads:

(1) The persons and bodies at whose instance a private caveat may be entered are:

- b** (a) any person or body claiming title to, or any **registrable** interest in, any alienated land or **any right to such** title or **interest**;
(Emphasis is mine).

- c** In recent cases, the Courts have given this subsection a wider and liberal interpretation to include purchasers of land, company owners, chargees, tenants and even an option holder [*Macon Engineers Sdn. Bhd. v. Goh Hooi Yen* [1976] 2 MLJ 53; *Macon Works & Trading Sdn. Bhd. v. Phang Hon Chin* [1976] 2 MLJ 177; *Karuppiah Chettiar v. Subramaniam* [1971] 2 MLJ 209; *Sing Lian Enterprise Sdn. Bhd. v. Soh Kim Tee* [1974] 2 MLJ 24]. Hashim Yeop Sani J. (as he then was) in *Macon Works & Trading Sdn. Bhd. v. Phang Hon Chin* [1976] 2 MLJ 177 @ 182 stated the rational behind those interpretations on the caveatee's interest as follows:

- d** it has been well established that as far as our Land Code is concerned the whole system of caveat is founded on the principle that they exist for the protection of alleged as well as proved interest and therefore not only is a person who has a right to a registrable interest in land who may enter a caveat but also any person claiming title to it or any registrable interest in any alienated land or even claiming only a right to such title or registrable interest may enter a caveat - see *Mahadevan & Anor. v. Patel*, also *Jit Kaur v. Parl Singh*, *Nanyang Development (1966) Sdn. Bhd. v. How Swee Poh* and *Inter-Continental Mining Co. Sdn. Bhd. v. Societe Des Etains De Bayas Tudjuh*.
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The same pronouncement on caveatable interest was echoed by Syed Agil J. (as he then was) in *Rap Nathan v. Haji Abdul Rahman Bin Haji Yusoff & Ors.* [1980] 1 MLJ 248 @ 251 as follows:

- f** Now, the whole system of caveats founded on the principle that they exist for the protection of alleged as well as for proved interests and of interests that have not yet become actual interests in land...

- g** In a well-written judgment of a the Supreme Court case of *Raju, J a/l M Kerpayya v. Kwong Yik Bank Bhd. & Anor.* [1994] 2 AMR 24 @ 1224 where His Lordship Wan Yahya SCJ touched on previous cases centred on the application of s. 323(1)(a) of the Code, the Court held that a mere right (as opposed to proved right) to a registrable interest is sufficient ground to enter a private caveat under the section and further, that a person who is entitled to commence an action for a declaratory decree affecting his rights under the Code is entitled to enter a private caveat.

- h** It is settled law that in an application by a caveatee to remove a caveat under s. 327 of the Code, the onus is on the caveator to satisfy the Court that he has a caveatable interest in the land within the meaning of s. 323(1). However, when the applicant under s. 327 is someone other than the caveatee who has no registered title to rely upon as *prima facie* evidence of his interest in the land, it is for him to begin by satisfying the Court that there are sufficient grounds in fact and law for treating him as a person claiming such an interest in the land as would, if it were established, make him aggrieved by the existence of the caveat [*Eng Mee Yong & Ors. v. Letchumanan* [1979] 2 MLJ 212]. In *Hew Sook Ying v. Hiw Tin Hee* 2 MLJ 189, the Supreme Court held that the respondent as a third
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party caveator must have satisfied the Court that he had a caveatable claim to title or registrable interest in the land and that to establish a caveatable claim to title or registrable interest in land under s. 323(1) of the Code, it was essential for the respondent caveator to have a claim filed or to be filed within reasonable time for adjudication. In that case the appellant had purchased a terrace house from a building company of which the respondent was the managing director. She claimed that she had paid the purchase price for the property and an instrument of transfer had been executed by two of the directors of the company. She could not register the transfer as there was a private caveat entered by the respondent on the land. The appellant applied for the removal of the caveat. Having regard to the principle established therein on the burden of proof, I am of the view that since the applicant in the case before me is in the same position as the appellant in that case and the respondent in this case is in the same position as the respondent in that case, the burden of proof lies on the respondent. Besides this, based on the principle laid down by the Privy Council in *Eng Mee Yong & Ors. v. Letchumanan Velayutham supra* which has been consistently applied by the Courts in this country, the respondent must satisfy the Court that on the evidence presented, her claim to an interest in the said land does raise a serious question to be tried and having done so, she must go on to show that on the balance of convenience it would be better to maintain the *status quo* until the trial of the action, by preventing the applicant from disposing the said land to some third party.

As I have said earlier in paragraph 4 above, the facts relied upon by both parties have raised a conflict of evidence mainly on the issue of consideration and is why I am unable to resolve the issue at this stage. For this reason, I am satisfied that the claim of the respondent's company to an interest in the said land does raise a serious question to be tried. Further, based on the facts that (i) the respondent's company was the original option holder to purchase the said land and that the right was assigned to the applicant for the alleged consideration as stipulated in the draft joint-venture agreement and (ii) the respondent's company is entitled to commence an action for a declaratory decree affecting its right on the said land, which action had already been filed, and based on the principle set out in paragraph 5 above, I am satisfied that the respondent's company has a mere right (as opposed to proved right) to a registrable interest in the said land within the meaning of s. 323(1)(a) of the Code. As to the balance of convenience, no doubt that the purpose of removing the caveats is to enable the applicant to register the said land in its name, but the fact that the said land is to be developed into a housing estate (see paragraphs 10 and 11 in the affidavit of Yap Sing Lee deposed on 8 January 1994) it cannot be denied that the sale of the housing lots and houses to house buyers is imminent. As the respondent's company had filed the said writ against the applicant and the registered proprietor of the said land I am satisfied that the respondent has shown that on the balance of convenience it would be better to maintain the *status quo* until the trial of the said action by preventing the applicant from disposing the said land to some third party.

Therefore, the application is dismissed with cost.

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